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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,274	01/04/2002	Jeffrey Allen Sturgill	UVD 0280 PA	6551
7590 09/29/2005 Killworth, Gottman, Hagan & Schaeff, L.L.P. One Dayton Centre, Suite 500 Dayton, OH 45402-2023			EXAMINER	
			SHEEHAN, JOHN P	
			ART UNIT	PAPER NUMBER
• •			1742	
			DATE MAILED: 09/29/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<u>_ h</u>						
	Application No.	Applicant(s)				
	10/038,274	STURGILL ET AL.				
Office Action Summary	Examiner	Art Unit -				
	John P. Sheehan	1742				
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the	correspondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1) Responsive to communication(s) filed on 18 Ju	ulv 2005.					
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims		•				
•	0.405.440 - 1.454.4541.4	and and the first and the safe				
4) Claim(s) 1,3-8,10-48,123,124,126-128,130-132,135-148 and 151-154 is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) <u>152-154</u> is/are allowed.	2 125 149 and 151 inlare reject	ad.				
6)⊠ Claim(s) <u>1,3-8,10-48,123,124,126-128,130-132,135-148 and 151</u> is/are rejected.						
7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/o	r cleation requirement	· .				
o) Claim(s) are subject to restriction and/o	election requirement.	•				
Application Papers						
9)☐ The specification is objected'to by the Examiner.						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Ex	* * * * * * * * * * * * * * * * * * * *					
		:				
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:						
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
3. Copies of the certified copies of the priority documents have been received in this National Stage						
application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list	, , , ,	ved.				
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,						
Attachment(s)		(27.2.440)				
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summar Paper No(s)/Mail I					
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) Notice of Informal	Patent Application (PTO-152)				
Paper No(s)/Mail Date	6)	•				
U.S. Patent and Trademark Office PTOL-326 (Rev. 7-05) Office Advanced in the control of the cont	ction Summary F	Part of Paper No./Mail Date 09202005				

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 18, 2005 has been entered.

Double Patenting

2. The Terminal Disclaimer submitted July 18, 2005 is acceptable and overcomes the obvious double patenting rejection of claims 1, 3 to 8, 10 to 48, 123, 124, 126 to 128, 130 to 132, 135 to 148 and 151 to 154 in view of the claims of copending Application No. 10/038,150.

Status of the Prior Art Rejection in View of Applicants' Amendment

3. The prior art rejection of claims 1, 3 to 8, 10 to 48, 123, 124, 126 to 128, 130-132, 135 to 148 and 151 based on the admitted known prior art disclosed in the specification has been overcome by applicants' amendment to independent claims 1, 123, 148 and 151.

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Claim Rejections - 35 USC § 112, 1st Paragraph

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 5. Claims 1, 3 to 8, 10 to 48, 123, 124, 126 to 128, 130 to 132, 135 to 148 and 151 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
 - I. The new claim limitation, "with the proviso that the inorganic valence stabilizer is not a vanadate or a tungstate" added to each of independent claims 1, 123, 148 and 151 does not find support in the application as filed and therefore is new matter.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also Ex parte Grasselli, 231 USPQ 393 (Bd. App. 1983), aff 'd mem., 38 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). See MPEP § 2163

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- § 2163.07(b) for a discussion of the written description requirement of 35 U.S.C. 112, first paragraph. See MPEP 2173.05(i), last paragraph

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Sheehan whose telephone number is (571) 272-1249. The examiner can normally be reached on T-F (6:45-4:30) Second Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John P. Sheehan Primary Examiner Art Unit 1742